



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TJR

Docket No: 2655-00

23 October 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Marine Corps on 27 October 1972 after two years of prior honorable service. Your record reflects that approximately six months later, on 26 March 1973, you began a 21 day period of unauthorized absence (UA) that was not terminated until you surrendered on 16 April 1973. However, on 17 April 1973, after breaking restriction, you began a 51 day period of UA that was not terminated until you were apprehended on 7 June 1973. Shortly thereafter, on 14 June 1973, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing two periods of UA totalling 72 days and breaking restriction.

Your record reflects that prior to submitting the request for discharge, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, on 29 June 1973, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-

martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 11 July 1973 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contentions that you were told that you would receive a general discharge, you were concerned about your girlfriend and child, had a drinking problem, and had lung cancer from agent orange. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your frequent and lengthy periods of UA and your request for discharge to avoid trial for the same. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for a clemency discharge was granted and should not be permitted to change your discharge now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director